

## **EXHIBIT A**

<http://biz.yahoo.com/prnews/070216/nyf106.html?v=33>

PR Newswire - Press Release

Compass Partners Announces the Closing of USA Capital Mortgage Deal

02.16.07, 3:50 PM ET

Compass Partners closes deal on significant Las Vegas non-casino real estate property LAS VEGAS.

Feb. 16 /PRNewswire/ -- NYC's private equity based. Compass Partners (<http://www.compass-partners.net>). announced today they have closed the deal on a non-casino real estate investment in Nevada. the bankrupt assets of USA Commercial Mortgage Company's (USACM) First Trust Deed Fund. Co-Founder and Partner David Blatt of Compass Partners LLC, a NY based private equity firm, entered the highest and best bid for the USA Commercial Mortgage Company (USACM) at the December 7th U.S. Nevada Bankruptcy auction. The \$67 million bid set precedent as a largely significant non-casino real estate project in Las Vegas.

Compass Partners researched the assets, and as a result, when bidding came up for USACM, they grabbed the corporation for \$67 million, despite the companies' actual value of more than \$150 million. Other bidders could not match up to the research and planning conducted by Compass Partners.

"The process was exciting, and at times, frustrating," explained Blatt. "Yet, the work is just beginning as we set to deal with the investors, the lenders, the loans and the assets attached to them. Compass Partners' strategy is to maintain its relationship with those who put their faith and money in USA Capital."

"Our approach was to provide the highest quality loan servicing experience, and now we are set to do just that," Blatt continued. "Compass Financial Partners, LLC has officially been launched last month, and we expect great opportunities here."

Boris Piskun, Co-Founder and Partner said, "We intend to stabilize the affairs of USACM and restore the borrower and investor relationships for Compass' future goals."

### About Compass Partners

Compass Partners is a private equity firm that acquires and services distressed mortgage loans. The company seeks to deploy over \$100 million annually to acquire companies and assets involving such mortgage loans. Compass Partner's analysis of any investment opportunity is underpinned by rigorous due diligence and a focus on value. The company has a full-time dedicated team responsible for monitoring the strategic, operational, and financial performance of its portfolio investments. It is this disciplined, value-oriented approach that serves investors well, even in a distressed environment over the holding period of an investment.

Press Contact: 5W Public Relations

Alyssa Miller: 212.584.4290 / Alison Crisci: 212.584.4305

[amiller@5wpr.com](mailto:amiller@5wpr.com) / [acrisci@5wpr.com](mailto:acrisci@5wpr.com)

SOURCE Compass Partners -0- 02/16/2007 /CONTACT: Alyssa Miller, +1-212-584-4290,

[amiller@5wpr.com](mailto:amiller@5wpr.com), or Alison Crisci, +1-212-584-4305, [acrisci@5wpr.com](mailto:acrisci@5wpr.com), both of 5W Public Relations, for Compass Partners/ /Web site: <http://www.compass-partners.net> / CO: Compass Partners: USA

Commercial Mortgage Company ST: Nevada IN: FIN RLT CNO SU: RLE RM -- NYF106 -- 9481

02/16/2007 15:48 EST <http://www.prnewswire.com>

Copyright © 2004 PR Newswire All rights reserved.

## EXHIBIT B

### LOAN SERVICING AGREEMENT

This Loan Servicing Agreement ("Agreement") is made as of the 9<sup>th</sup> day of NOVEMBER, 2004, between USA Commercial Mortgage Company ("USA") and Patrick F. Fenlon and Angela B. Fenlon, husband and wife as joint tenants with the rights of survivorship ("Lender")

#### RECITALS

- A. USA is a mortgage broker and loan servicer in Clark County, Nevada.
- B. Lender lends, or wishes to lend, money to various borrowers (the term "Borrower" includes single and married persons, corporations, trusts, partnerships and all other legal entities) from time to time, which loans are arranged by USA and are secured by interests in real and/or personal property.
- C. Lender wishes to retain the services of USA in connection with making and servicing a loan or loans ("Loan" or "Loans" as the context requires), including all Loans heretofore or hereafter placed by Lender through USA, all upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Services in Connection with Arranging the Loans. USA will perform the following services in connection with arranging each Loan:

- (a) Obtain a promissory note or notes secured by the trust deed referred to in Section 1(b) below, executed by Borrower in a form customarily used by USA and approved by USA's counsel.
- (b) Obtain a deed of trust, assignment of rents and security agreement executed by Borrower in form customarily used by USA and approved by USA's counsel, and cause the same to be properly recorded.
- (c) Obtain one or more personal or corporate guaranties, if applicable and as determined by USA to be necessary, executed by such guarantors, as USA shall deem appropriate, in form customarily used by USA.
- (d) If USA deems it appropriate or necessary, obtain, at Borrower's expense, an appraisal of the property to be encumbered, prepared and executed by an appraiser reasonably satisfactory to USA.
- (e) Obtain from a reputable title insurance company, at Borrower's expense, a fully-paid ALTA lender's policy of title insurance, showing Lender as an insured, in an amount at least equal to the initial principal amount of the note and showing as exceptions only those items approved by USA and its counsel.

(f) Cause the Borrower to obtain, where applicable, casualty insurance policies in amounts at least equal to the principal amount of the note or the full insurable value of the improvements on the encumbered real property, whichever is less, containing a mortgage or loss payee clause naming Lender, or USA (as agent for Lender), as an additional insured or loss payee

(g) Obtain from the Borrower and each guarantor such recent financial statements and information as USA shall deem appropriate.

(h) Obtain, with respect to any and all encumbrances of record to which Lender's deed of trust will be subject, documentation verifying the principal balance thereof within a reasonable time prior to the making of the Loan and specifying any then existing defaults thereunder.

(i) Obtain such other documents in connection with the Loan, as USA may deem appropriate in order to protect the Lender's interest

(j) All documents which USA obtains from borrower in connection with arranging or servicing any Loan, so long as such Loan is outstanding, shall be kept on file in USA's corporate office and be available to Lender upon request. Notwithstanding the foregoing, USA shall have no obligation or responsibility to obtain any original documents in connection with any Loan serviced by USA, but not arranged or originated by USA.

(k) Prepare and deliver to escrow closing instructions to effectuate the Loan closing in accordance with the Loan Agreement and the Fee Agreement.

2. Services of USA in Connection with Servicing the Loans. Subject to and in accordance with the terms and conditions set forth in this Agreement, and all applicable laws, Lender instructs and authorizes USA to, and USA will perform the following services in connection with servicing each of the Loans:

(a) Verify, where applicable, that the property encumbered by Lender's deed of trust is insured (at the Borrower's expense) by a sufficient casualty insurance policy and that Borrower has sufficient liability insurance coverage. USA will hold for the Lender's account such policies and renewals thereof

(b) Keep appropriate accounting records on each note and the sums collected thereon, which records will reflect the amounts collected as to principal, interest and late charges, and, if applicable, insurance, taxes and other specified amounts. Those records will be available for review by the Lender during regular business hours at USA's corporate office.

(c) Until the total amount due under each note is paid in full:

(i) Proceed diligently to collect all payments due under the terms of the note and promptly pay the proper parties, when and if due, principal, interest, late charges, insurance and other specified funds

(ii) In the event the Borrower fails to make any payment to USA as required by the terms of the note, USA will take steps to collect the payment including

but not limited to delivering default notices, commencing and pursuing foreclosure procedures, and obtaining representation for Lender in litigation and bankruptcy proceedings as deemed necessary or appropriate by USA in its business judgment to fully protect the interests of the Lender, and of all Lenders in the loan.

(iii) In its sole discretion, USA may pay off any Lender at any time by paying the then outstanding balance of Lender's interest in the principal of the Loan, plus all accrued interest and any prepayment penalty or fee, if applicable. Any Lender so paid off shall concurrently execute and deliver therewith to USA an assignment, in a form acceptable to USA, of all of such Lender's right, title, and interest in the Loan (including all documents evidencing the Loan) and in the deed of trust securing the Loan.

(iv) In its sole discretion, USA may waive late payment charges, assumption fees, charges for returned checks due to insufficient funds, or other fees which may be collected in the ordinary course of servicing the Loans.

(d) Provide the Lender with regular statements regarding loan collections, but in no event less frequently than quarterly.

(e) Without limiting the generality of anything contained herein, Lender hereby authorizes and empowers USA, on Lender's behalf, to: (1) execute and deliver demands for payoff and beneficiary's / lender's statements of condition and the like; (2) execute and deliver any and all instruments of satisfaction or cancellation, or of partial or full release, discharge, or reconveyance, or authorizations in connection therewith, with respect to any Loans paid in full and with respect to the related real or personal property securing such Loans; (3) execute and deliver any and all other documents with respect to any Loans that are customary and consistent with loan servicing practices pertaining to such loans; (4) consent to modifications of the Loans if the effect of any such modification will not materially or adversely affect the security provided by the real or personal property in connection therewith; (5) institute foreclosure proceedings (judicial or non-judicial), obtain a deed-in-lieu thereof, engage in settlement discussions, and enter into forbearance and other settlement-related agreements (which agreements may contain provisions that release or waive claims against a Borrower or Guarantor); and (6) take title in the name of Lender (in proportion to its interest in the Loan) to any real property upon a foreclosure or delivery of a deed-in-lieu thereof. Notwithstanding the foregoing or any other provision contained herein, USA may not permit any modification to any Loan that would change the interest rate, forgive the payment of any principal or interest (expressly excluding late charges or the difference between default and non-default interest), change the outstanding principal amount, or extend the maturity date, without Lender's prior consent; provided, however, if Lender fails to grant or deny its consent within three (3) business days after notice from USA, Lender shall be deemed to have conclusively given its consent.

3. **Rights of Lender if USA Fails to Act.** Pursuant to NAC 645B.073, in the event of default, foreclosure, or other matters that require action, if for any reason USA fails to act on Lender's behalf as authorized herein, then Lender may, with approval of fifty-one percent (51%) or more of all of the holders of the beneficial interest of record in the Loan, act on behalf of all such holders of beneficial interest of record. These actions may include, but are not limited to:

- (a) the designation of the mortgage broker, servicing agent or other person to act on behalf of the holders of the beneficial interests in the loan; and
- (b) the sale, encumbrance or lease of real property owned by the holders resulting from a foreclosure or the receipt of a deed in lieu of a foreclosure.

4. Legal Proceedings USA will assist the Lender in any necessary foreclosure proceedings to protect the Lender's interest in the note and deed of trust. Where necessary, in USA's business judgment, USA may retain attorneys on Lender's behalf. Any legal proceeding instituted by USA pursuant to this Agreement may be pursued in USA's name only or as agent for Lender. Upon demand by USA, Lender agrees to promptly pay, either in advance or to reimburse USA, for its pro rata portion of the out-of-pocket expenses incurred, including attorney's fees, trustee's fees and foreclosure costs. In the event that Lender fails to pay such sums to USA upon demand or request thereof, or if USA elects to advance such sums, USA may, in its discretion, advance such fees, including trustee's fees, attorney's fees, and costs of foreclosure; provided, however, that any fees advanced by USA shall be paid back from the proceeds of the foreclosure (whether by reinstatement or sale), or from any other monies collected with respect to such Loan, before any payments are made to Lender. In the event of any litigation concerning the Loan, Lender hereby appoints USA as its agent to accept service of any summons and complaint, naming Lender as a party.

5. Compensation to USA for Loan Servicing Lender authorizes USA to retain monthly, as compensation for services performed hereunder, (a) one-twelfth (1/12th) of its annual servicing fee, which shall not exceed three percent (3%) per annum of the maximum principal amount of each of the Loans, (b) any late charges collected from the Borrower pursuant to the terms of the Note, and (c) and default interest collected from the Borrower pursuant to the terms of the Note. Notwithstanding the foregoing, it is agreed and acknowledged that USA derives the bulk of its revenues from charging loan fees ("points") to the Borrower. Certain Borrowers, however, may prefer to pay a higher rate of interest in exchange for a reduction in loan fees payable in advance to USA, the higher interest rate comprising a deferred loan fee. USA will notify Lender when such a case arises, and advise Lender of what portion of the interest is payable to USA as a deferred loan fee.

Should Lender desire to sell all or any part of its interest in the note and deed of trust, USA will assist Lender in finding potential buyers and completing the necessary documentation for the transaction. A fee of 5% of the remaining balance of Lender's undivided interest in the note amount will be deducted from the selling price and paid to USA on all such assignments for which USA locates the Assignee.

In the event an extension of a Loan is negotiated, USA shall be entitled to charge a fee therefor from the Borrower pursuant to a separate fee agreement between USA and the Borrower.

6. USA's Right to Delegate. Notwithstanding anything contained herein, USA may in its sole discretion delegate specific loan arranging and servicing obligations to credit bureaus, real estate tax service companies, real estate brokers or agents, appraisers, attorneys, trustees, or others, provided that USA shall remain responsible for all action taken or not taken by such companies, agents, representatives, and others throughout the term of this Agreement.

7. No Legal Advice Lender acknowledges that USA will not act as Lender's attorney or provide legal advice to Lender, and that Lender is encouraged to seek independent counsel in connection with any

questions Lender may have concerning this agreement, any Loan, USA's form loan documents, or any other matter

8. Termination. Lender may, by 30 days written notice to USA, terminate this agreement, and the power of attorney granted, if one is granted, under Section 11 of this Agreement, if USA fails to perform its obligations hereunder.

9 Lender's Registration. Lender(s) name as listed in the first paragraph of this Agreement is the exact form for registration of Lender's interest and for reference to Lender in the Loan Documents.

10. Integration Clause. This Agreement contains the entire agreement between the parties hereto and cannot be modified except by a written amendment signed by both parties. The invalidity of any portion of this agreement shall in no way affect the balance thereof. This Agreement shall remain in effect until Lender's interest in all notes and deeds of trust with respect to Loans arranged and/or serviced by USA is completely liquidated (unless sooner terminated in accordance with the terms hereof)

11. Limited Power of Attorney. With respect to each loan, Lender hereby agrees that USA shall have full power and authority, and Lender hereby appoints USA as its true and lawful attorney-in-fact to (a) hold the original note(s), and (b) to do all things and take all actions on behalf of Lender which are necessary or convenient to effectuate this Agreement and its intent and to protect Lender's interest under any note, deed of trust, guaranty, security agreement or other document pertaining to any Loan Upon USA's request, Lender hereby agrees to execute and deliver, in the presence of a notary public, a "Declaration of Agency and Limited Power of Attorney", in a form consistent with Chapter 645B of the Nevada Revised Statutes, pursuant to which Lender shall further evidence the appointment of USA as Lender's true and lawful attorney-in-fact to undertake the duties of USA hereunder. No one shall be required to look beyond such Declaration of Agency and Limited Power of Attorney for evidence of USA's authority hereunder All Declarations of Agency and Limited Powers of Attorney may include the language: This document may be executed with counterpart signature pages, and the document with all counterpart signature pages shall constitute one and the same instrument.

12 Notices. All notices, demands and other communications required or permitted hereunder shall be in writing and shall be deemed to have been given (i) when personally delivered, or (ii) on receipt, when deposited with a recognized overnight courier service such as Federal Express or DHL, or (iii) three (3) business days after the date when deposited in the United States mail and sent postage prepaid by registered or certified mail, return receipt requested, addressed as follows:

If to USA: USA Commercial Mortgage Company  
4484 S. Pecos Road  
Las Vegas, Nevada 89121-5030  
Attention:

If to Lender:

Attention:

or at such other address as the party to be served with notice may have furnished in writing to the party seeking or desiring to serve notice as a place for the service of notice

13. Governing Law. This Agreement shall be construed in accordance with the laws of the State of Nevada, without regard to the conflict of laws or rules thereof, and the obligations, rights and remedies of the parties hereunder shall be determined in accordance with such laws,

14. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same instrument.

15. Attorney's Fees. In the event any party hereto brings an action to enforce any of the provisions of this Agreement, the party against whom judgment is rendered in such action shall be liable to the other for reimbursement of its costs, expenses and attorneys' fees, including such costs, expenses and fees as may be incurred on appeal,


16. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties' respective successors and assigns.

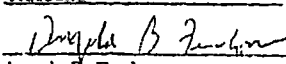
17. Headings. Sections headings used in this Agreement are for convenience only and shall not affect the meaning or interpretation of this Agreement

18. Authority. Each party represents and warrants to the other party that it is duly authorized to execute, deliver and perform this Agreement

IN WITNESS WHEREOF, the parties hereto have signed, sealed, acknowledged and delivered this instrument the day and year first above written

LENDER: Patrick F. Fenlon and Angela B. Fenlon, husband and wife as joint tenants with the rights of survivorship

By:   
Name: Patrick F. Fenlon  
Title: Husband

By:   
Name: Angela B. Fenlon  
Title: Wife

USA COMMERCIAL MORTGAGE COMPANY

By:   
Joseph D. Wlaskowski, President



**EXHIBIT C**

-----Original Message-----

**From:** Smith, Susan Marie [mailto:[smsmith@mesirowfinancial.com](mailto:smsmith@mesirowfinancial.com)]

**Sent:** Monday, March 26, 2007 2:14 PM

**To:** saugust@sierrafunds.com

**Cc:** Koe, Robert

**Subject:** USA Capital Servicing Fees

Scott, the accrued and unpaid service fee for Placer Vineyards is \$462.6K, and Placer 2 is \$72.5K

Susan M. Smith  
Senior Vice President  
Mesirow Financial Consulting

2 S. Biscayne Blvd., Suite 1800  
Miami, FL 33131

o: 305-416-3313  
c: 305-968-9007  
e: [smsmith@mesirowfinancial.com](mailto:smsmith@mesirowfinancial.com)



**EXHIBIT D**

-----Original Message-----

**From:** Koe, Robert [mailto:rkoe@mesirowfinancial.com]

**Sent:** Friday, March 23, 2007 10:46 AM

**To:** saugust@sierrafunds.com

**Subject:** FW: Placer Vineyards - payoff

---

**From:** Steele, Sarah

**Sent:** Friday, March 23, 2007 1:16 PM

**To:** Koe, Robert

**Subject:** Placer Vineyards - payoff

Hi Bob -

I received your message and have attached the payoff summary I prepared and sent a couple of days ago. Let me know if you need me to update it or if you have any questions about it.

<<Placer and Placer 2nd Payoffs (3.21.07).xls>>

Thanks -

Sarah M. Steele

**Mesirow Financial Consulting**

Vice President

2828 Routh Street, Suite 650

Dallas, TX 75201

o: 214-954-1453

c: 817-706-7852

e: ssteele@mesirowfinancial.com

As of 3/21/07  
Maturity Date

Dec-05

**Placer Vineyards**

Principal	31,500,000.00
Regular Interest	5,873,461.97
Default Interest	3,544,274.38
Late Fees	201,812.87
Other Fees	-
<b>Total</b>	<b>41,119,549.22</b>

Per Diem (Regular)	12,882.96
Per Diem (Default)	7,729.77

**Placer Vineyards  
2nd**

Principal	6,500,000.00
Regular Interest	1,509,722.39
Default Interest	379,657.93
Late Fees	54,305.03
Other Fees	-
<b>Total</b>	<b>8,443,685.34</b>

Per Diem (Regular)	3,526.96
Per Diem (Default)	881.74

49,563,234.56

**EXHIBIT E**

**EXCERPT TAKEN FROM THE DEED OF TRUST, ASSIGNMENT OF RENTS,  
SECURITY AGREEMENTS AND FIXTURE FILING FOR THE PLACER  
VINEYARDS SENIOR NOTE**

*Recorded in Placer County, CA on 12/20/04*

1.16 Advances. If Trustor shall fail to perform any of the covenants herein contained or contained in any other Loan Document, the Beneficiary may, but is not obligated to, pay any and all amounts necessary to perform same or cause same to be performed on behalf of Trustor, and all sums so expended by Beneficiary for payment of any item whatsoever, including, but not by limiting the generality of the foregoing, payment of taxes, insurance premiums, lien claimants or assessments shall be secured by this Deed of Trust and each such payment shall be and all such payments shall be collectively referred to herein as an "Advance." The Trustor shall repay to Beneficiary on demand each and every Advance and the sum of each such Advance shall accrue interest at the Default Rate, as that term is defined in the Note, from the date of each Advance until repaid to Beneficiary. Nothing herein contained, including the payment of such amount or amounts by Beneficiary, shall prevent any such failure to perform on the part of Trustor from constituting an Event of Default as defined herein. Any such advance shall be deemed made under an obligation to do so.

---

**EXHIBIT F**

-----Original Message-----

From: Robert Coldren [<mailto:rcoldren@hkclaw.com>]  
Sent: Friday, March 30, 2007 10:56 AM  
To: Geoffrey Berman; Douglas Monson; Scott August; Charles, Robert;  
[jriley@sierrafunds.com](mailto:jriley@sierrafunds.com); [mgatti@wildelaw.com](mailto:mgatti@wildelaw.com)  
Cc: [tyson.lomazow@weil.com](mailto:tyson.lomazow@weil.com); Koe, Robert; Smith, Susan Marie; Annette Jarvis;  
Steven Strong; Kevin Glade  
Subject: RE: Placer Vineyards

Thanks--I understand you work for the liquidating trustee, and we appreciate the response

-----Original Message-----

From: Geoffrey Berman [<mailto:gberman@dsi.biz>]  
Sent: Friday, March 30, 2007 11:36 AM  
To: Robert Coldren; Douglas Monson; Scott August; Charles, Robert;  
[jriley@sierrafunds.com](mailto:jriley@sierrafunds.com); [mgatti@wildelaw.com](mailto:mgatti@wildelaw.com)  
Cc: [tyson.lomazow@weil.com](mailto:tyson.lomazow@weil.com); Koe, Robert; Smith, Susan Marie; Annette Jarvis;  
Steven Strong; Kevin Glade  
Subject: RE: Placer Vineyards

Gentlemen:

I can not make that representation. You know what I know, no more.

Geoff

---

From: Robert Coldren [<mailto:rcoldren@hkclaw.com>]  
Sent: Fri 3/30/2007 11:30 AM  
To: Douglas Monson; Geoffrey Berman; Scott August; Charles, Robert;  
[jriley@sierrafunds.com](mailto:jriley@sierrafunds.com); [mgatti@wildelaw.com](mailto:mgatti@wildelaw.com)  
Cc: [tyson.lomazow@weil.com](mailto:tyson.lomazow@weil.com); Koe, Robert; Smith, Susan Marie; Annette Jarvis;  
Steven Strong; Kevin Glade  
Subject: RE: Placer Vineyards

So are we correct in concluding from both of your responses that compass and the debtor had no involvement whatsoever, direct or indirect, in the funding of the tax payment?

-----Original Message-----

From: Douglas Monson [<mailto:dmonson@RQN.COM>]  
Sent: Friday, March 30, 2007 10:36 AM  
To: Geoffrey Berman; Scott August; Charles, Robert; Robert Coldren;  
[jriley@sierrafunds.com](mailto:jriley@sierrafunds.com); [mgatti@wildelaw.com](mailto:mgatti@wildelaw.com)  
Cc: [tyson.lomazow@weil.com](mailto:tyson.lomazow@weil.com); Koe, Robert; Smith, Susan Marie; Annette Jarvis;  
Steven Strong; Kevin Glade  
Subject: RE: Placer Vineyards

Mr. August: When I contacted the Placer County Treasurer's office on Wednesday about the tax payments, they were not able to tell me at that time who had made the payments. I just called the Treasurer's office again this morning. The checks that come in for payment of taxes are imaged by the Treasurer's office so that they can keep a record of who makes a tax payment, but their computers were down yesterday, and I was told that the image of the check for these tax payments would not be available until Monday or Tuesday of next week. If you would like to

check yourself on Monday or Tuesday, the phone number is 530-889-4120, and the Parcel Numbers are 023-200-010-000, 023-200,012-000, and 023-200-013-510. The Debtor did not make these tax payments.

Doug Monson

Douglas M. Monson  
Ray Quinney & Nebeker P.C.  
36 South State Street, Suite 1400  
Salt Lake City, Utah 84111  
Direct: 801-323-3345  
Fax: 801-532-7543  
[www.rqn.com](http://www.rqn.com)

IRS Rules of Practice require us to inform you that advice, if any, in this email (including any attachments) concerning federal tax matters is not intended to be used, and cannot be used or relied upon for the purpose of avoiding penalties under the Internal Revenue Code, nor for promoting, marketing or recommending any transaction or matter addressed herein.

This e-mail is sent by a law firm and contains information that may be privileged and confidential. If you are not the intended recipient, please delete the e-mail and notify us immediately.

-----Original Message-----

From: Geoffrey Berman [<mailto:gberman@dsi.biz>]  
Sent: Friday, March 30, 2007 11:27 AM  
To: Scott August; Charles, Robert; [rcoldren@hkclaw.com](mailto:rcoldren@hkclaw.com); [jriley@sierrafunds.com](mailto:jriley@sierrafunds.com); [mgatti@wildelaw.com](mailto:mgatti@wildelaw.com)  
Cc: Douglas Monson; [tyson.lomazow@weil.com](mailto:tyson.lomazow@weil.com)  
Subject: RE: Placer Vineyards

Mr. August:

We are advised that the funds came from Mr. Milanowski through a distribution from another LLC in which he and/or USAIP was involved.

Geoff Berman

---

From: Scott August [<mailto:saugust@sierrafunds.com>]  
Sent: Fri 3/30/2007 11:12 AM  
To: 'Charles, Robert'; [rcoldren@hkclaw.com](mailto:rcoldren@hkclaw.com); [jriley@sierrafunds.com](mailto:jriley@sierrafunds.com); [mgatti@wildelaw.com](mailto:mgatti@wildelaw.com)  
Cc: Geoffrey Berman; 'Monson, Douglas'; [tyson.lomazow@weil.com](mailto:tyson.lomazow@weil.com)  
Subject: RE: Placer Vineyards

Our counsel has suggested we contact you regarding the source of payment on the taxes. Counsel has informed us that as a bidder we have a right to know who paid the taxes.

Specifically did the Debtor or Compass fund the taxes? Or do the Debtor or Compass know anything about anyone that had anything to do with the payment?

If we do not get a clear answer on this, this may be another issue that we may need to ask Judge Riegler for clarity on.

Thank you.

Regards,

Scott D. August, CFA  
Sierra Liquidity Fund, LLC  
2699 White Road, Ste. 255  
Irvine, CA 92614  
PH: 949-660-1144, ext. 17  
Cell: 310-529-2447  
Fax: 949-660-0632  
Email: [saugust@sierrafunds.com](mailto:saugust@sierrafunds.com)  
[www.sierrafunds.com](http://www.sierrafunds.com)

-----Original Message-----

From: Charles, Robert [<mailto:RCharles@lrlaw.com>]  
Sent: Thursday, March 29, 2007 10:59 AM  
To: [kluu@suncal.com](mailto:kluu@suncal.com); [dkirby@kirbymac.com](mailto:dkirby@kirbymac.com); [dcooney@silverpointcapital.com](mailto:dcooney@silverpointcapital.com); [bankruptcy@rocgd.com](mailto:bankruptcy@rocgd.com); [saugust@sierrafunds.com](mailto:saugust@sierrafunds.com); [jriley@sierrafunds.com](mailto:jriley@sierrafunds.com); [rcoldren@hkclaw.com](mailto:rcoldren@hkclaw.com); [mark@nevadainvestors.com](mailto:mark@nevadainvestors.com)  
Cc: Berman, Geoff; Sorenson, Matthew; Monson, Douglas  
Subject: FW: Placer Vineyards

You have expressed interest in the Placer Vineyards loan servicing rights. I enclose information obtained by RQN indicating that a portion of the back taxes have been paid, apparently by or on behalf of Mr. Milanowski for the owner. We do not know if the bill from the ownership group for legal, engineering and other costs was paid or not.

Rob

---

From: Douglas Monson [<mailto:dmonson@RQN.COM>]  
Sent: Thursday, March 29, 2007 10:59 AM  
To: [dturetsky@reedsmith.com](mailto:dturetsky@reedsmith.com); Karides, Constantine; [tyson.lomazow@weil.com](mailto:tyson.lomazow@weil.com)  
Cc: Koe, Robert; Charles, Robert; Annette Jarvis; Steven Strong; Kevin Glade; Berman, Geoff  
Subject: FW: Placer Vineyards

Dear Debra, Constantine, and Tyson:

Pursuant to Debra's e-mail to me earlier this morning, and to update Tyson, I have attached some information that I gathered yesterday on the current status of the real property taxes on the Placer Vineyards Project. I have tried to find some updated information from the Placer County Treasurer's website this morning to determine if there were any additional payments that have been posted to the \$297,107.88 in Default Taxes that were still owing as of yesterday, but the tax payment inquiry feature of the website was not functioning this morning. Bob Koe was told that \$380,000 was paid towards the taxes rather than the \$353,765.38 that was posted yesterday, but I have not yet been able to verify that actually occurred.

Doug Monson

Douglas M. Monson  
Ray Quinney & Nebeker P.C.  
36 South State Street, Suite 1400  
Salt Lake City, Utah 84111  
Direct: 801-323-3345  
Fax: 801-532-7543  
[www.rqn.com](http://www.rqn.com) <<http://www.rqn.com/>>

IRS Rules of Practice require us to inform you that advice, if any, in this email (including any attachments) concerning federal tax matters is not intended to be used, and cannot be used or relied upon for the purpose of avoiding penalties under the Internal Revenue Code, nor for promoting, marketing or recommending any transaction or matter addressed herein.

This e-mail is sent by a law firm and contains information that may be privileged and confidential. If you are not the intended recipient, please delete the e-mail and notify us immediately.

---

From: Douglas Monson  
Sent: Wednesday, March 28, 2007 5:31 PM  
To: 'Charles, Robert'; Koe, Robert  
Cc: Berman, Geoff; Annette Jarvis; Steven Strong; Kevin Glade  
Subject: RE: Placer Vineyards

Rob: I checked the public records for the Placer County Treasurer this afternoon, and I also called and spoke to an Assistant Treasurer in that office. There are 3 parcels involved, 023-200-010-000, 023-200-012-000, and 023-200-013-510. The Current Taxes (2006 Taxes) for all 3 parcels were paid today and were posted as paid this afternoon, including both the Late 1st Installments for all 3 parcels that were late on 12/10/06, and the Due 2nd Installments for all 3 parcels that were due on 2/1/07, and would have been late on 4/10/07. The total amount of 2006 Current Taxes on all 3 parcels that was paid today was \$353,765.38.

The Default Taxes (taxes owing from prior years) on all 3 parcels are still showing as unpaid, as indicated on the attached taxroll inquiries I printed off of the Treasurer's website. The total amount of the Default Taxes for all 3 parcels is \$297,107.88 (\$50,953.67 for Parcel No. 023-200-010-000, \$112,409.61 for Parcel No. 023-200-012-000, and \$133,744.60 for Parcel No. 023-200-013-510).

The Assistant Treasurer that I spoke to asked if anyone in her office knew who had paid the Current Taxes. No one knew that information. The Assistant Treasurer also said that it is possible that there could have been another check(s) for the Default Taxes that had not yet been posted. She suggested that I check back, which I will do tomorrow.

Doug Monson

Douglas M. Monson  
Ray Quinney & Nebeker P.C.  
36 South State Street, Suite 1400  
Salt Lake City, Utah 84111  
Direct: 801-323-3345  
Fax: 801-532-7543  
[www.rqn.com](http://www.rqn.com) <<http://www.rqn.com/>>

IRS Rules of Practice require us to inform you that advice, if any, in this email (including any attachments) concerning federal tax matters is not intended to be used, and cannot be used or relied upon for the purpose of avoiding penalties under the Internal Revenue Code, nor for promoting, marketing or recommending any transaction or matter addressed herein.

This e-mail is sent by a law firm and contains information that may be privileged and confidential. If you are not the intended recipient, please delete the e-mail and notify us immediately.



-----  
For more information about Lewis and Roca LLP, please go to [www.lewisandroca.com](http://www.lewisandroca.com)  
<<http://www.lewisandroca.com/>> .

Phoenix (602) 262-5311  
Tucson (520) 622-2090  
Las Vegas (702) 949-8200  
Reno (775) 770-2600  
Albuquerque (505) 764-5400

This message is intended only for the use of the individual or entity to which it is addressed. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this message is strictly prohibited. If you have received this communication in error, please notify us immediately by replying to the sender of this E-Mail by return E-Mail or by telephone.

In accordance with Internal Revenue Service Circular 230, we advise you that if this email contains any tax advice, such tax advice was not intended or written to be used, and it cannot be used, by any taxpayer for the purpose of avoiding penalties that may be imposed on the taxpayer.

This message is intended for the person to whom it was addressed. If you have received this message in error please return it to sender. In addition, please be aware that this message is from an employee of the law firm of Hart King & Coldren ("the Firm") sent using the Firm's e-mail system and computer equipment. You are hereby advised that all such e-mail belong to the Firm and that the Firm's e-mail and internet policy states that any electronic mail being received from or sent to any employee of the Firm using the Firm's e-mail system may be monitored by someone other than the recipient and that each employee of the Firm has acknowledged a "no confidentiality and privacy" waiver for such e-mail in this regard.

**Exhibit G**

SCHWARTZER & MCPHERSON LAW FIRM  
 2850 South Jones Boulevard, Suite 1  
 Las Vegas, Nevada 89146-5308  
 Tel: (702) 228-7590 • Fax: (702) 892-0122

1 Annette W. Jarvis, Utah Bar No. 1649  
 Steven C. Strong, Utah Bar No. 6340  
 2 RAY QUINNEY & NEBEKER P.C.  
 3 36 South State Street, Suite 1400  
 P.O. Box 45385  
 4 Salt Lake City, Utah 84145-0385  
 Telephone: (801) 532-1500  
 5 Facsimile: (801) 532-7543  
 Email: [ajarvis@rqn.com](mailto:ajarvis@rqn.com)  
 6

E-FILED ON MARCH 29, 2007

7 Lenard E. Schwartzer, Nevada Bar No. 0399  
 Jeanette E. McPherson, Nevada Bar No. 5423  
 8 SCHWARTZER & MCPHERSON LAW FIRM  
 2850 South Jones Boulevard, Suite 1  
 9 Las Vegas, Nevada 89146-5308  
 Telephone: (702) 228-7590  
 10 Facsimile: (702) 892-0122  
 11 E-Mail: [bkfilings@s-mlaw.com](mailto:bkfilings@s-mlaw.com)

12 Attorneys for Debtors and Debtors-in-Possession

13 **UNITED STATES BANKRUPTCY COURT**  
 14 **DISTRICT OF NEVADA**

15 In re:  
 USA COMMERCIAL MORTGAGE COMPANY.  
 16 Debtor.

Case No. BK-S-06-10725 LBR  
 Case No. BK-S-06-10726 LBR  
 Case No. BK-S-06-10727 LBR  
 Case No. BK-S-06-10728 LBR  
 Case No. BK-S-06-10729 LBR

17 In re:  
 USA CAPITAL REALTY ADVISORS, LLC.  
 18 Debtor.

Chapter 11

19 In re:  
 USA CAPITAL DIVERSIFIED TRUST DEED  
 20 FUND, LLC,  
 Debtor.

Jointly Administered Under  
 Case No. BK-S-06-10725 LBR

21 In re:  
 USA CAPITAL FIRST TRUST DEED FUND, LLC.  
 22 Debtor.

**OBJECTION OF USA  
 COMMERCIAL MORTGAGE  
 COMPANY TO THE  
 ADMINISTRATIVE EXPENSE  
 CLAIM OF SIERRA LIQUIDITY  
 FUND, LLC**

23 In re:  
 USA SECURITIES, LLC,  
 24 Debtor.

(Affects USA Commercial Mortgage Company)

25 Affects:  
☐ All Debtors  
☒ USA Commercial Mortgage Company  
 26 ☐ USA Securities, LLC  
 27 ☐ USA Capital Realty Advisors, LLC  
☐ USA Capital Diversified Trust Deed Fund, LLC  
 28 ☐ USA First Trust Deed Fund, LLC

Hearing Date: April 26, 2007  
 Hearing Time: 9:30 a.m.

1 USA Commercial Mortgage Company ("USACM"), by and through its counsel, hereby  
 2 files its Objection to the Administrative Expense Claim of Sierra Liquidity Fund, LLC  
 3 ("Objection") and moves this Court, pursuant to section 502 of title 11 of the United States Code  
 4 (the "Bankruptcy Code") and Rule 3007 of the Federal Rules of Bankruptcy Procedure (the  
 5 "Bankruptcy Rules"), for an order granting the relief sought by this Objection.

# 6 I. FACTUAL BACKGROUND

7 1. On April 13, 2006 ("Petition Date"), USACM, USA Securities, LLC ("USA  
 8 Securities"), USA Capital Realty Advisors, LLC ("USA Realty"), USA Capital Diversified Trust  
 9 Deed Fund, LLC ("DTDF"), USA Capital First Trust Deed Fund, LLC ("FTDF" and together with  
 10 DTDF, the "Funds") (collectively the "Debtors"), filed voluntary petitions for relief under chapter  
 11 11 of the Bankruptcy Code. From the Petition Date through March 12, 2007 (the "Effective  
 12 Date"), the Debtors continued to operate their businesses, if any, as debtors-in-possession pursuant  
 13 to sections 1107(a) and 1108 of the Bankruptcy Code. Post-petition management of the Debtors  
 14 was under the direction of Thomas J. Allison of Mesirow Financial Interim Management, LLC  
 15 ("Mesirow"), who served as the Chief Restructuring Officer.

16 2. USACM is a Nevada Corporation that, prior to the Petition Date, was in the  
 17 business of underwriting, originating, brokering, funding and servicing commercial loans  
 18 primarily secured by real estate, both on behalf of investors and for its own account.

19 3. This business included the solicitation of individual investors to purchase fractional  
 20 interest in loans that USACM originated and then serviced. These investors, totaling  
 21 approximately 3,600 as of the Petition Date, are referred to as "Direct Lenders" in USACM's  
 22 bankruptcy case and in this Objection.

23 4. Although USACM serviced and sometimes originated the loans in which the Direct  
 24 Lenders invested, USACM was not a borrower on these loans.

25 5. Beginning in Summer 2006, USACM's post-management began sending investor  
 26 statements to Direct Lenders that indicated, among other things, whether the loans in which they  
 27 had invested were performing.  
 28

SCHWARTZ & MCPHERSON LAW FIRM  
2850 South Jones Boulevard, Suite 1  
Las Vegas, Nevada 89146-5308  
Tel: (702) 228-7590 • Fax: (702) 892-0122

1           6.       On October 19, 2006, USACM filed with the Court a copy of the Asset Purchase  
2 Agreement among the Debtors and SPCP Group, LLC (the "Silver Point APA") [Docket No.  
3 1603]. Attached to the Silver Point APA is a schedule listing the status as of July 31, 2006, of  
4 most of the loans USACM serviced as performing or non-performing.

5           7.       Pursuant to Section 2.2(b) of the Silver Point APA, parties in interest were on  
6 notice that USACM intended to transfer the servicing of the loans to a different entity.

7           8.       On December 7, 2006, an auction was held whereby Compass Partners LLC  
8 ("Compass") agreed to purchase, among other things, most of USACM's assets.

9           9.       On December 18, 2006, USACM filed with the Court a copy of its Asset Purchase  
10 Agreement with Compass (the "Compass APA") [Docket No. 2164]. Attached to the Compass  
11 APA was a schedule listing the status as of July 31, 2006, of most of the loans USACM serviced  
12 as performing or non-performing.

13           10.      Section 2.3(i) of the Compass APA further stated that the purchase price for  
14 USACM's assets would be "reduced dollar for dollar by the amount of any payoff or reduction of  
15 [USACM's assets] from [December 7, 2007] to the Closing Date." Therefore, USACM was  
16 obligated to obtain approval from Compass before commencing any foreclosures.

17           11.      On January 8, 2007, this Court entered its Order Confirming the "Debtors' Third  
18 Amended Joint Chapter 11 Plan of Reorganization" [Docket No. 2376].

19           12.      Debtors' Third Amended Chapter 11 Plan of Reorganization (the "Plan") [Docket  
20 No. 1799] provides the following deadlines for objections to Claims:

21           (A) for any and all Claims and Equity Interests to which the General Bar Date  
22 applies, ninety (90) days after the Effective Date; (B) for any and all Claims to  
23 which the Administrative Claims Bar Date or the Professionals Administrative Bar  
24 Date applies, thirty (30) days after the expiration of the respective Bar Date; and  
25 (C) for any and all Claims to which the Bar Date applicable under section B.3 of  
26 Art. V of the Plan applies, thirty (30) days after the expiration of that Bar Date.

27           13.      Under the Plan, the USACM Liquidating Trust exists as of the Effective Date,  
28 which was March 12, 2007. Geoffrey L. Berman is the Trustee.

SCHWARTZ & MCPHERSON LAW FIRM  
 2850 South Jones Boulevard, Suite 1  
 Las Vegas, Nevada 89146-5308  
 Tel: (702) 228-7590 · Fax: (702) 892-0122

14. On March 14, 2007, Sierra Liquidity Fund, LLC ("Sierra") filed an administrative expense claim and a request for payment thereof (the "Claim") [Docket No. 3088]. Sierra did not assert a specific amount that it seeks to have paid as an administrative expense, but it appears the Claim is in excess of \$660,000.

15. Sierra asserts that it is the assignee of various interests in nine separate loans serviced by USACM (the "Loans"), which interests it received from former Direct Lenders. According to Exhibit "A" attached to its Claim, these interests were allegedly assigned to Sierra beginning on November 20, 2006, after USACM had filed with the Court the Silver Point APA, and continuing into March 2007.

16. For the reasons discussed below, USACM objects to Sierra's Claim and asserts that it should be disallowed in its entirety.

## II. ARGUMENT

Section 503 of the Bankruptcy Code permits entities to file a request for payment of administrative expenses. *See* 11 U.S.C. § 503(a). Such an expense is allowed only after a notice and a hearing. *See* § 503(b). A claim filed for an administrative expense, "unlike a proof claim is not deemed allowed in the absence of an objection and does not constitute prima facie evidence of the validity and amount of the request." *In re Silvus*, 329 B.R. 193, 205 (Bankr. E.D. Va. 2005) (internal quotations omitted); *see also Fullmer v. United States (In re Fullmer)*, 962 F.2d 1463, 1467 (10<sup>th</sup> Cir. 1992) (no presumption for administrative expense claims). Therefore, a claimant seeking the payment of an administrative expense enjoys no presumption of validity and bears the burden at all times of proving an entitlement to payment as an administrative expense.

USACM objects to Sierra's Claim and asserts that it should be disallowed in its entirety. The Claim, which is based on unsupported allegations of breaches the occurrence of which USACM denies, has been waived and superseded by the Plan. Furthermore, Sierra has presented no evidence in support of its alleged damages. Therefore, Sierra has not met its burden of showing that it is entitled to payment of its claim as an administrative expense, and the Court should disallow its Claim entirely.

### A. The Direct Lenders Waived All Claims Against USACM Under the Plan

1 The confirmed Plan resolved various Claims among the Debtors and third-parties including  
 2 the Direct Lenders. As part of these compromises confirmed in the Plan, USACM and the Direct  
 3 Lenders mutually released each other as of the Effective Date from any and all Claims, with a few  
 4 exceptions not relevant to this Objection. Specifically, the Plan broadly states in Article VIII,  
 5 Section A(4) (page 76) that:

6 *As of the Effective Date*, in consideration for the obligations, subordination, modifications  
 7 of rights and accommodations of [USACM] and except as otherwise expressly provided  
 8 under the Plan, *the Direct Lenders*, pursuant to the settlements embodied in the Plan, on  
 9 their own behalf (the "Direct Lender Releasors"), *shall be deemed to forever release,*  
 10 *waive and discharge any and all Claims*, demands, debts, liabilities, obligations, actions,  
 11 causes of action, suits, sums of money, accounts, reckonings, covenants, contracts,  
 12 controversies, agreements, promises and rights whatsoever, *whenever arising*, whether  
 13 known or unknown, suspected or unsuspected, contingent or fixed, liquidated or  
 14 unliquidated, matured or unmatured, in law, equity, bankruptcy or otherwise, based upon,  
 15 arising out of, relating to, by reason of, or in connection with, in whole or in part, any act  
 16 or omission, transaction, occurrence, fact or matter from the beginning of time to the  
 17 Effective Date, including, without limitation, *in any way relating to [USACM]*, the  
 18 [USACM estate], the USACM and FTDF Chapter 11 Cases, including any causes of  
 19 action, or any other matter which any of the Direct Lender Releasors *or any Person or*  
 20 *Entity claiming by, from, through, or under any of the Direct Lender Releasors* ever had,  
 21 now has, or hereafter can, shall, or may have against [USACM].

22 (emphasis added).

23 As stated, Sierra asserts that it is the assignor of various interests that it received from  
 24 former Direct Lenders. Thus Sierra is claiming an administrative expense "by, from, through, or  
 25 under any of the Direct Lender Releasors." The Order confirming the Plan stated in paragraph 8  
 26 that the "provisions of the Plan and this Confirmation Order shall bind . . . (f) all Direct Lenders. .  
 27 . ." Furthermore, the Order stated in paragraph 64 that "[a]s set forth in Article VIII, Section A. of  
 28 the Plan, the limitation of liability and release provisions shall be effective and binding upon all  
 applicable Persons and entities to the fullest extent provided in the Plan." These provisions mean  
 that Sierra's Claim, like all Direct Lender Claims (except as expressly provided in the Plan), has  
 been "forever release[d], waive[d], and discharge[d]" against USACM. Therefore, the Court  
 should disallow Sierra's Claim in its entirety.

29 ///

30 ///



1           B.     USACM Appropriately Exercised its Business Judgment in Not Foreclosing on  
2                    Non-Performing Loans

3           Furthermore, in addition to the fact that the Claim was waived and released pursuant to the  
4 Plan, USACM has not breached the Loan Servicing Agreements. Sierra asserts that it has been  
5 damaged because USACM did not initiate foreclosure proceedings for its Loans. Specifically,  
6 Sierra states that USACM “failed to send notices of foreclosure, to commence or pursue  
7 foreclosure proceedings, or take such other action as required, thus breaching its duty to Sierra.”  
8 Sierra erroneously assumes that foreclosure is the only way to service a loan, which is simply not  
9 the case.

10           Sierra’s allegation that the Loan Servicing Agreement requires USACM to foreclose on a  
11 non-performing loan is inaccurate and contrary to the express language of the Loan Servicing  
12 Agreement. Section 2(c)(ii) of the Loan Servicing Agreement states that USACM will take steps  
13 necessary to collect payments, including pursuing foreclosure procedures, “as deemed necessary  
14 or appropriate by [USACM] *in its business judgment*.” (emphasis added). Thus the Loan  
15 Servicing Agreement expressly leaves the decision of whether to initiate foreclosure proceedings  
16 exclusively to USACM’s discretion and to be decided in its “business judgment.” Nowhere does  
17 the Loan Servicing Agreement require USACM to automatically foreclose on every non-  
18 performing loan as Sierra has suggested.

19           The business judgment rule “is a presumption that in making a business decision the  
20 directors of a corporation “acted on an informed basis, in good faith, and in the honest belief that  
21 the action taken was in the best interests of the company.” *Navellier v. Sletten*, 262 F.3d 923, 946  
22 n12 (9<sup>th</sup> Cir. 2001) (*quoting Smith v. Van Gorkum*, 488 A.2d 858, 872 (Del. 1985)). The business  
23 judgment rule has been applied to bankruptcy proceedings as well with the presumption being that  
24 the actions were taken “in the best interests of the bankruptcy estate.” *Agarwal v. Pomona Valley*  
25 *Med. Group, Inc. (In re Pomona Valley Med. Group, Inc.)*, 476 F.3d 665, 669 (9<sup>th</sup> Cir. 2007)  
26 (adopting the corporate business judgment rule for bankruptcy proceedings).

27           USACM appropriately exercised its business judgment in choosing to negotiate with the  
28 borrowers for the collection of non-performing loans rather than foreclosing on the collateral.

USACM's decision to negotiate rather than foreclose was and is entirely reasonable, and in the best interests of the USACM estate particularly in light of the fact that it appears no negotiations or collection activities took place under USACM's pre-petition management. Therefore, post-petition USACM has not committed a breach of the Loan Servicing Agreements by deciding not to pursue foreclose proceedings since USACM's actions were conducted based on its business judgment and were reasonable under the circumstances.

**C. Sierra Knew Prior to Acquiring its Interests that the Loans were Non-Performing and that USACM Intended to Transfer the Servicing Obligations**

According to Sierra's Exhibit "A." Sierra acquired most of its interests in the Loans after USACM had filed both the Silver Point APA and Compass APA with the Court, and acquired all of its interests in the Loans after USACM had filed the Silver Point APA. All of the Loans that were included among the assets listed in the Silver Point APA and Compass APA were listed as non-performing. In addition, by the time Sierra claims it first acquired its interests in the Loans, USACM's post-petition management had already sent out investor statements indicating which loans were non-performing. Thus Sierra had full knowledge that the Loans were non-performing and that USACM intended to soon transfer the servicing of such loans to Silver Point or a higher bidder in connection with a plan of reorganization. Sierra knew the problems associated with the Loans when it purchased its interests so it is disingenuous for it to now claim that it has suffered any damage. By filing its Claim, Sierra is simply trying to get favorable treatment from the Court at the expense of USACM's general unsecured creditors.

**D. Sierra is Either Bound by the Loan Servicing Agreements or it has No Relationship with USACM and Can Assert No Claim**

In its Claim, Sierra does not concede that it is a party to the Loan Servicing Agreements related to the non-performing loans at issue. Sierra has maintained that it is not a party to the Loan Servicing Agreements entered into by the Direct Lender's from whom it purchased its loan interests and has consistently refused to sign new Loan Servicing Agreements with USACM.

Sierra contends that if the Loan Servicing Agreements are not binding on it then USACM owes no contractual obligation to Sierra but does have "fiduciary duties to Sierra in purporting to

1 act as servicer of the Loans.” This allegation is incorrect. If there is no contractual relationship  
 2 between USACM and Sierra then there is no relationship at all between the two parties and  
 3 USACM owes Sierra no duty. USACM, as the former loan servicer, had a contractual not a  
 4 fiduciary relationship with the Direct Lenders, and in any event owed no duty whatsoever to  
 5 lenders with which it had no contractual relationship. The relationship between Sierra and  
 6 USACM is either governed by the binding Loan Servicing Agreements or there is no relationship  
 7 between the parties and Sierra can assert no claim against USACM.

8 **E. Sierra has Offered No Evidence that it has Suffered any Damage**

9 Sierra argues that its damages arise from a decline in market values on the properties  
 10 underlying the Loans. Specifically, it speculates without any evidence in support that “[b]ased on  
 11 general market declines in value and Sierra’s knowledge of the specific properties” the value of  
 12 the properties underlying the non-performing Loans “has declined by at least 25%.” Sierra offers  
 13 no evidence in support of this speculative decline in value. Sierra does not even clarify the time  
 14 period for which the value of the properties is alleged to have declined so it is impossible to  
 15 determine if any decrease in value occurred pre- or post-petition. Sierra’s use of such vague and  
 16 unsupported allegations clearly does not meet the burden placed on it to prove its administrative  
 17 expense claim.

18 Sierra has claimed further damage based solely on its belief that USACM “will seek to  
 19 recover from any sale proceeds an amount equal to the default interest that the borrower would  
 20 have been obligated to pay under the terms of the loan had the borrower made payments as  
 21 required.” The Loan Servicing Agreements and other loan documents speak for themselves in this  
 22 regard. The servicer of the Loans, which is not USACM after the Effective Date, is bound to  
 23 comply with the provisions of the loan documents and can only collect default interest in  
 24 accordance with such provisions. By the same token, Sierra, to the extent it is a party to the loan  
 25 documents, is also bound by the provisions regarding the collection of default interest and cannot  
 26 seek to absolve itself of its obligations with respect to these provisions through the filing of an  
 27 administrative expense claim. Thus Sierra’s claim that it will be damaged if default interest is  
 28 collected is without merit since such collection can only occur in accordance with the properly

1 executed Loan Servicing Agreements and other governing loan documents.

2 **III. CONCLUSION**

3 For the reasons discussed above, USACM objects to the administrative expense claim filed  
4 by Sierra and requests that the Court disallow this claim in its entirety. USACM also requests  
5 such other and further relief as is just and proper.

6 Dated: March 29, 2007

9 /s/ Jeanette E. McPherson

10 Lenard E. Schwartzer, Nevada Bar No. 0399  
11 Jeanette E. McPherson, Nevada Bar No. 5423  
12 SCHWARTZER & MCPHERSON LAW FIRM  
13 2850 South Jones Boulevard, Suite 1  
14 Las Vegas, Nevada 89146

15 and

16 Annette W. Jarvis, Utah Bar No. 1649  
17 Steven C. Strong, Utah Bar No. 6340  
18 RAY QUINNEY & NEBEKER P.C.  
19 36 South State Street, Suite 1400  
20 P.O. Box 45385  
21 Salt Lake City, Utah 84145-0385  
22 Attorneys for Debtors

23 919440v6

David T. Cohen (TX Bar No. 75008424)  
 Alexandra P. Olenczuk (TX Bar No. 24033924)  
**WARNER STEVENS, L.L.P.**  
 301 Commerce Street, #1700  
 Fort Worth, TX 76102  
 Tel: (817) 810-5250  
 Fax: (817) 810-5255  
 Email: [dcohen@warnerstevens.com](mailto:dcohen@warnerstevens.com)  
 Email: [aolenczuk@warnerstevens.com](mailto:aolenczuk@warnerstevens.com)

E-FILED ON: MARCH 14, 2007

and

Michelle L. Abrams (NV Bar No. 5565)  
**MICHELLE L. ABRAMS, LTD.**  
 3085 South Jones Blvd., Suite C  
 Las Vegas, Nevada 89146  
 Tel: (702) 369-3724  
 Fax: (702) 369-0651  
 Email: [mabrams@mabramslaw.com](mailto:mabrams@mabramslaw.com)

*Counsel for Sierra Liquidity Fund, L.L.C.*

IN THE UNITED STATES BANKRUPTCY COURT  
 FOR THE DISTRICT OF NEVADA

In Re:	)	Case No. BK-S-06-10725 LBR
	)	Case No. BK-S-06-10726 LBR
USA COMMERCIAL MORTGAGE COMPANY,	)	Case No. BK-S-06-10727 LBR
Debtor.	)	Case No. BK-S-06-10728 LBR
	)	Case No. BK-S-06-10729 LBR
In Re:	)	
USA CAPITAL REALTY ADVISORS, LLC,	)	Chapter 11
Debtor.	)	
	)	Jointly Administered Under
In Re:	)	Case No. BK-S-06-10725 LBR
USA CAPITAL DIVERSIFIED TRUST DEED	)	
FUND, LLC,	)	
Debtor.	)	
	)	
In Re:	)	
USA CAPITAL FIRST TRUST DEED FUND,	)	
LLC,	)	ADMINISTRATIVE EXPENSE
Debtor.	)	CLAIM OF SIERRA LIQUIDITY
	)	FUND, L.L.C., AND REQUEST FOR
In Re:	)	PAYMENT THEREOF
USA SECURITIES, LLC,	)	
Debtor.	)	[Affidavit of James S. Riley filed
	)	concurrently herewith]
Affects:	)	

<input type="checkbox"/> All Debtors	)	Hearing Date: April 26, 2007
<input checked="" type="checkbox"/> USA Commercial Mortgage Company	)	Hearing Time: 9:30 a.m
<input type="checkbox"/> USA Securities, LLC	)	Objection Deadline: March 29, 2007
<input type="checkbox"/> USA Capital Realty Advisors, LLC	)	
<input type="checkbox"/> USA Capital Diversified Trust Deed Fund, LLC	)	
<input type="checkbox"/> USA Capital First Trust Deed Fund, LLC	)	

---

If you object to the relief requested herein, you *must* timely file a **WRITTEN** response to this pleading with the Court. You must also serve your written response on the person who sent you this notice.

If you do not timely file a written response with the Court, or if you do not serve your written response on the person who sent you this notice, then:

- The Court may *refuse to allow you to speak* at the scheduled hearing; and
- The Court may *rule against you* without formally calling the matter at the hearing.

Sierra Liquidity Fund, L.L.C. ("Sierra"), hereby files this administrative expense claim and request for payment thereof (the "Request"), and respectfully states as follows:

**A. REQUEST FOR PAYMENT OF ADMINISTRATIVE EXPENSE**

1. These cases were commenced by the filing of voluntary Chapter 11 petitions by the above-entitled Debtors (the "Debtors") on April 13, 2006 (the "Petition Date").

2. On January 8, 2007, the Bankruptcy Court entered its Order confirming the "Debtors' Third Amended Joint Plan of Reorganization, as Modified Herein" (the "Plan"). The Plan provides that the deadline for the filing of Administrative Expense Claims against the Debtors is 30 days after the Effective Date. See section B.1.c.i. of the Plan. As this deadline has not occurred as of the date of the filing of this Request, this Request is timely filed.

3. Sierra is the assignee of those notes, deeds of trust and other rights connected therewith as set forth on Exhibit "A" attached hereto (all collectively referred to herein as the "Loans"). Debtor USA Commercial Mortgage Company ("USA Commercial") purports to be the servicer of these Loans under loan servicing agreements (the "Loan Servicing Agreements") between USA Commercial and the assignors of the Loans.

4. To the extent that Loan Servicing Agreements exist with respect to one or more of the Loans and further that Sierra is bound by the terms of the Loan Servicing Agreements, then USA Commercial has contractual obligations to Sierra. To the extent that the Loan Servicing Agreements do not exist or are not binding on Sierra, yet USA Commercial is nevertheless purporting to service one or more of the Loans, then USA Commercial has fiduciary duties to Sierra in purporting to act as servicer of the Loans.

5. From and after the Petition Date, one or more of the Loans became non-performing or continued to be non-performing, such that it was the responsibility and obligation of USA Commercial to protect the interests of Sierra. Evidence of the non-performing status of Loans in which Sierra holds an interest is set forth in Exhibit "B" hereto, which consists of USA Commercial's report dated July 31, 2006.

6. To the extent that Sierra is bound by the Loan Servicing Agreements, then Section 2.(c)(i) and (ii) of the Loan Servicing Agreements provides that USA Commercial is required to:

- (i) Proceed diligently to collect all payments due under the terms of the note and promptly pay the proper parties, when and if due, principal, interest, late charges, insurance and other specified funds.

and

- (ii) In the event the Borrower fails to make any payment to USA [Commercial] as required by the terms of the note, USA [Commercial] will take steps to collect the payment including but not limited to delivering default notices, commencing and pursuing foreclosure procedures, and obtaining representation for Lender in litigation and bankruptcy proceedings as deemed



necessary or appropriate by USA [Commercial] in its business judgment to fully protect the interests of the Lender, and of all Lenders in the loan.

A true and correct sample of what Sierra is informed and believes is a typical Loan Servicing Agreement is attached hereto as Exhibit "C."

7. Sierra is informed and believes that from and after the Petition Date, USA Commercial failed to take such action as required under the above-quoted sections of the Loan Servicing Agreements. Sierra is informed and believes that with respect to non-performing Loans, USA Commercial failed to send notices of foreclosure, to commence or pursue foreclosure proceedings, or take such other action as required, thus breaching its duty to Sierra.

8. To the extent Sierra is not a party to or bound by the Loan Servicing Agreements, then USA Commercial's failure to act reasonably as a purported servicer of the Loans is a breach of USA Commercial's fiduciary duty to Sierra as imposed under the law.

**B. CALCULATION OF ADMINISTRATIVE EXPENSE CLAIM**

9. The pool of loans serviced by USA Commercial generally falls into two categories:

(1) Acquisition and pre-development loans to residential and commercial developers ("Predevelopment Loans") on unimproved real property. A typical loan would be on a multi-acre site in which a developer needs a "bridge loan" to acquire property and obtain all entitlements required to build thereon. These are typically one to two year loans, during which time the developer seeks to complete the permit process and fund a construction and development loan from a full service lender.

(2) Acquisition and improvement loans ("Improvement Loans"). These are loans where a builder purchases improved property and enters into an agreement to increase the loan incrementally as pre-approved improvements are made. A typical

loan may be on an apartment complex with additional funds available for rehabilitating and converting to a for-sale condominium project.

**1. Damages Due to Decline in Value of the Underlying Real Property.**

10. During the Chapter 11 cases, several of the Predevelopment Loans held by Sierra have either become non-performing or have continued to be non-performing. Based on general market declines in value and Sierra's knowledge of the specific properties, Sierra calculates that the value of the real property underlying the non-performing Predevelopment Loans held by Sierra has declined by at least 25%. USA Commercial's failure timely to foreclose or otherwise to protect the interests of Sierra in these non-performing Predevelopment Loans has damaged Sierra.

11. The following is a list of Predevelopment Loans in which Sierra holds an interest and which became non-performing during the Chapter 11 cases or which continued to be non-performing during the Chapter 11 cases. The list sets forth the principal amount of Sierra's interests and a calculation of Sierra's damages or losses as a percentage of the total principal amount of the loan. In addition, Sierra assumes that the value of the underlying real property approximately equaled the loan amounts at the time of the origination of the loan.

Date Listed as Non-Performing	PROPERTY	PRINCIPAL AMOUNT OF INVESTMENT
Jun-06	3685 San Fernando Road	\$235,000.00
Jul-06	Binford Medical	\$170,000.00
Jun-06	Brookmere	\$36,987.00
Jun-06	Hesperia II	\$50,000.00
Jun-06	Margarita Annex	\$425,000.00
Jul-06	Oak Shores II	\$239,000.00
Jun-06	Placer Vineyards	\$810,000.00
Jun-06	Marquis Hotel	\$45,000.00
Total		\$2,010,987.00
Damages 25%		\$502,746.75

12. Sierra holds one Improvement Loan that has become non-performing or has continued to be non-performing during the Chapter 11 cases. The value of that underlying real property has declined 25%. As a result of USA Commercial's failure to timely foreclose on the Improvement Loan, Sierra has been damaged as follows:

Date Listed as Non-performing	PROPERTY	PRINCIPAL AMOUNT OF INVESTMENT
Jun-06	Gramercy Court	\$650,000.00
Total		\$650,000.00
Decline in Value (Damages)		25%
Damages		\$162,500.00

2. **Damages Due to the Improper Charge of "Default Interest".**

13. In addition to the decline in value, Sierra is informed and believes that in the event of foreclosure on any non-performing loan, be it a Predevelopment or Improvement Loan, that USA Commercial or Compass will seek to recover from any sale proceeds an amount equal to the default interest that the borrower would have been obligated to pay under the terms of the loan had the borrower made payments as required. The Servicing Agreements, however, do not allow for the collection by USA Commercial of such "default interest" upon foreclosure. Section 5(c) of the Servicing Agreement allows only for payment to the servicer of "default interest collected from the Borrower pursuant to the terms of the Note." (Emphasis added.) Upon a foreclosure, there is no "default interest collected from the Borrower" and so the retention of such amount by USA Commercial or any other purported servicer upon a foreclosure is improper, unlawful and will damage Sierra equal to the amount of such "default interest." Sierra is informed and believes that USA Commercial will take the position that upon foreclosure it is entitled to retain as "default interest" the difference between the default rate of interest and the non-default rate of interest. Sierra is informed and believes that this difference is 8% per year, which is the amount of "default

interest” that USA Commercial will seek to retain from foreclosure sale proceeds. In the event USA Commercial contends that “default interest” is the entire default interest rate, and not just the difference between the default and the non-default interest rate, then Sierra reserves the right to amend this Request to add such amount as additional damages.

14. In the event that it is determined that USA Commercial is entitled to “default interest” from foreclosure sale proceeds, which entitlement Sierra denies, then Sierra was damaged by USA Commercial’s failure to timely foreclose on the underlying real property and thereby incurring the “default interest.” Rather than protect Sierra’s interests, USA Commercial instead delayed in conducting foreclosure sales in order to incur such “default interest” which it then would seek to collect from foreclosure sale proceeds.

15. As a result of USA Commercial’s failure to promptly foreclose on the non-performing loans, therefore, Sierra has been doubly hurt in that values of the properties have declined and further that such depressed values will be subject to payment of “default interest” to USA Commercial. Had USA Commercial promptly acted, USA Commercial could have foreclosed on the properties when market values were higher and before “default interest” had been incurred.

16. To summarize, with respect to Predevelopment Loans, Sierra has been damaged as follows:

Date Listed as Non-Performing	PROPERTY	PRINCIPAL AMOUNT OF INVESTMENT
Jun-06	3685 San Fernando Road	\$235,000.00
Jul-06	Binford Medical	\$170,000.00
Jun-06	Brookmere	\$36,987.00
Jun-06	Hesperia II	\$50,000.00
Jun-06	Margarita Annex	\$425,000.00
Jul-06	Oak Shores II	\$239,000.00
Jun-06	Placer Vineyards	\$810,000.00
Jun-06	Marquis Hotel	\$45,000.00
Total		\$2,010,987.00

Decline in Value (Damages)	25%	\$502,746.75
"Default Interest" Delta	10% <sup>1</sup>	\$201,098.70
Total Damages		\$703,845.45

17. With respect to Improvement Loans, Sierra has been damaged as follows:

Date Listed as Non-performing	PROPERTY	PRINCIPAL AMOUNT OF INVESTMENT
Jun-06	Gramercy Court	\$650,000.00
Total		\$650,000.00
	Decline in Value (Damages)	25%
	"Default Interest" Delta	10%
	Total Damages	\$227,500.00

18. In addition to the foregoing, Sierra has been damaged by incurrence of additional and continuing loan service fees of between 1-3% per year, lost opportunity costs and legal fees and costs according to proof.

19. The analysis set forth above assumes that the Loan Servicing Agreements are binding on Sierra. In the event that Sierra is not bound by the Loan Servicing Agreements, Sierra, in addition to the above damages, will hold a damage claim against the Debtors for breach of their fiduciary duty, in an amount to be determined according to proof.

20. Sierra reserves the right to (i) amend or supplement this Request, and (ii) assert or file additional claims.

21. All notices respecting this Request should be sent to the following:

David T. Cohen, Esq.  
Warner Stevens, L.L.P.  
301 Commerce Street, Suite 1700

---

<sup>1</sup> While Sierra is informed and believes that the difference between the non-default and the default rate of interest is 8% per year, Sierra further assumes a default pre-foreclosure period of 15 months, equating to 1.25 years, and therefore calculates "Default Interest" Delta damages at 10% ( $8\% \times 1.25 = 10\%$ ). To the extent that the default pre-foreclosure period is longer than 15 months, then damages on account of improperly retained 'default interest' will be higher and Sierra reserves the right to amend this Request to so reflect.

Fort Worth, Texas 76102  
Tel.: (817) 810-5250  
Facsimile: (817) 810-5255  
e-mail: [dcohen@warnerstevens.com](mailto:dcohen@warnerstevens.com)

**CONCLUSION**

WHEREFORE, Sierra respectfully requests that the Court enter an order (i) granting Sierra an allowed administrative expense claim pursuant to Section 503 of the Bankruptcy Code in the amount set forth above or otherwise as determined according to proof, (ii) directing the Debtors to make payment of such allowed administrative expense claim; and (iii) providing for such other and further relief that the Court may deem just and proper.

Dated: March 14, 2007

Respectfully submitted:

By: /S/ DAVID T. COHEN  
David T. Cohen (TX Bar No. 75008424)  
**WARNER STEVENS, L.L.P.**  
301 Commerce Street, #1700  
Fort Worth, TX 76102  
Tel: (817) 810-5250  
Fax: (817) 810-5255  
Email: [dcohen@warnerstevens.com](mailto:dcohen@warnerstevens.com)

*and*

Michelle L. Abrams (NV Bar No. 5565)  
**MICHELLE L. ABRAMS, LTD.**  
3085 South Jones Blvd., Suite C  
Las Vegas, Nevada 89146  
Tel: (702) 369-3724  
Fax: (702) 369-0651  
Email: [mabrams@mabramslaw.com](mailto:mabrams@mabramslaw.com)

*Counsel for Sierra Liquidity Fund, L.L.C.*